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October 28, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0630

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should not be granted an access authorization.

I. BACKGROUND

In September 2007, the DOE conducted a Personnel Security Interview with the individual (the 2007 PSI) regarding her misuse of alcohol and other concerns. In addition, the individual was evaluated in December 2007 by a DOE-consultant psychiatrist (the DOE-consultant Psychiatrist), who issued a report setting forth his conclusions and observations. DOE Exhibit 5.

In March 2008, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Sections 710.8(f), (j) and (l) of the regulations governing eligibility for access to classified material (Criteria F, J and L). With respect to Criterion F, the Notification Letter finds that the individual deliberately misrepresented or falsified information provided to the DOE at her 2007 PSI. Specifically, at that PSI, she denied ever harboring any suicidal thoughts. However, in her December 2007 evaluation, she admitted to the DOE-consultant Psychiatrist that when she was 19, she attempted suicide by overdose after the breakup of a relationship.

With respect to Criterion J, the Notification Letter finds that in the opinion of the DOE-consultant Psychiatrist, in December 2007 the individual met the DSM-IV TR criteria for "Alcohol Dependence, with Physiological Dependence, in Partial Sustained Remission," with no evidence of rehabilitation or reformation. The DOE-consultant Psychiatrist further indicated in his report that he noted the presence of some clinically significant Borderline Personality traits which worsen the prognosis for her alcohol use disorder.

The Notification Letter also refers to the following information concerning the individual's misuse of alcohol:

1. She suffered from Alcohol Dependence in 1991 and was discharged from the Air Force because of her failure to achieve rehabilitation.
2. In 1991, within four months after her release from rehabilitation, she had discontinued her outpatient counseling and her participation in Alcoholics Anonymous. She resumed drinking against treatment recommendations.
3. She admitted to consuming alcohol after her 1991 release from alcohol rehabilitation and had a number of alcohol-related domestic violence problems in her marriage from 1996 to 2006.
4. In 2006, work related stressors caused her consumption of alcohol to become excessive, and she admitted that "alcohol was a method of escape." She engaged in treatment for a second time for her excessive drinking but remained in treatment for only a short time. She admits continuing to consume alcohol.

The Notification Letter finds with respect to Criterion L that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable, or trustworthy. Specifically:

1. She continues to engage in behavior that is not reliable in that she remains in a relationship where domestic violence exists and where she is exposed to excessive alcohol use, which is a concern given the diagnosis regarding her alcohol use.

2. She engages in unreliable behavior associated with Borderline Personality traits such as an adult pattern of unstable marital relationships, periods of intense anger, and brief intense depression which have caused personal distress and have affected relationships in the workplace.

See Enclosure 2 to Notification Letter, DOE Exhibit 1.

II. *THE SEPTEMBER 2008 HEARING*

At the individual's request, a hearing was convened in September 2008 to afford her an opportunity to submit information to resolve these concerns. At the hearing and at a subsequent telephone conference, testimony was received from eleven persons. The DOE presented the testimony of the DOE-consultant Psychiatrist. The individual testified and presented the testimony of her psychologist, her psychiatrist, her husband, her sister, her longtime friend, a co-worker, and her former supervisor. At the telephone conference, testimony was heard from a couple who are social friends of the individual and her husband.

The hearing testimony focused on the opinions of the medical professionals concerning the individual's diagnosis and treatment, and the individual's efforts to document her period of abstinence from alcohol, and the extent of her rehabilitation activities. Testimony also was received with regard to concerns about her anger management, her marital relationship, and the concern that she deliberately failed to report a suicide attempt.

III. *APPLICABLE STANDARDS*

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v.*

Egan, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing* (Case No. VSO-0005), 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS OF TESTIMONY AND FINDINGS

A. The DOE's Criterion J Concern

(1) Diagnosis

At the hearing, the DOE-consultant Psychiatrist testified that he continues to believe that his diagnosis of Alcohol Dependence for the individual is appropriate. TR at 250. The individual did not specifically contest this diagnosis, and has committed herself to sobriety. TR at 201, 69. The diagnosis of Alcohol Dependence also is supported by the individual's psychologist. TR at 262. The individual's psychiatrist disagrees and maintains that her past abuse of alcohol was a form of self medication for her Post Traumatic Stress Disorder, Attention Deficit Disorder and depression. TR at 213-216. In light of her lengthy history of severe alcohol problems, I believe that the weight of evidence supports the DOE-consultant Psychiatrist's diagnosis of Alcohol Dependence. I therefore turn to the issue of whether the individual has demonstrated rehabilitation from this diagnosis.

(2) Rehabilitation

The individual has provided significant evidence to mitigate the concerns regarding her Alcohol Dependence. I find that the testimony and evidence presented in this proceeding provides sufficient corroborative support for the individual's assertion that she has been abstinent from alcohol since December 11, 2007. The individual provided her own testimony on this point, and her husband testified that she ceased drinking at about that time. TR

at 59-60, 22-23. Her psychologist and psychiatrist testified that the individual has reported to them that she has been maintaining sobriety since December 2007. TR at 262-263, TR at 225. The individual's claim of ongoing sobriety also is supported by the testimony of her sister, her longtime friend and her neighbors. TR at 171-181, 161-163, 287-307. Therefore, I find that, as of the date of the hearing, the individual had been abstinent from alcohol since December 11, 2007, a period of almost nine months.

I was impressed with the testimony of the individual's psychologist and psychiatrist, who believe that the individual is committed to her sobriety and to resolving the personal issues that have led her to misuse alcohol in the past. The individual has met weekly with her psychologist since December 2007, and has met twice a month with her psychiatrist since April 2008. TR at 256-257, 213-219. The testimony of her husband persuades me that he is not encouraging her to consume alcohol (TR at 38-43), and the individual states that she is supported in her sobriety by her brother. TR at 99-100.

Nevertheless, the security concerns have not been fully resolved. At the hearing, the DOE-consultant Psychiatrist testified that while the individual has made progress in her recovery, he believes that she needs a full year of sobriety combined with three months of individual alcohol counseling in order to be considered rehabilitated from her alcohol dependence. TR at 241-243. The individual's psychologist also recommended a full year of sobriety, and testified that the individual would benefit from alcohol counseling. TR at 273-276. Only the individual's psychiatrist testified that the individual's current treatment regimen and her current period of sobriety place her at a low risk of relapse. TR at 223-225.

Overall, I was convinced by the DOE-consultant Psychiatrist's testimony. See, e.g., *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (Hearing Officer gave deference to expert medical opinion in finding that rehabilitation was not established). My assessment of the individual's demeanor and of the evidence presented at the hearing persuaded me that the individual is committed to sobriety, and to ongoing therapy that substantially supports her sobriety. See TR at 64, 68. However, I agree with the DOE-consultant Psychiatrist and the individual's psychologist that the individual's nine months of sobriety are not sufficient to demonstrate that she is at low risk for relapse. In this regard, I note that medical professionals often require a full year of abstinence to establish rehabilitation, because a one year abstinence period allows an individual to go through a sufficient

number of ups and downs that normally occur within a year to test whether he or she can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing* (Case No. TSO-0150), 29 DOE ¶ 82,800 at 85,756 (2005). In the present case, with nine months of sobriety at the time of the hearing, the individual has not yet dealt with all of the seasonal activities and stressors that can trigger relapses. Moreover, I agree with the DOE-consultant Psychiatrist that individual alcohol counseling is a necessary component of the individual's rehabilitation. Such counseling would allow the individual to focus specifically on her alcohol problem and to develop techniques and habits for avoiding alcohol triggers and dealing with her occasional urges to consume alcohol. See TR at 70, 99. Accordingly, I find that the individual has not resolved that DOE Criterion J concern at this time.

B. The DOE's Criterion L Concerns

As stated above, the Notification Letter also sets forth the following Criterion L security concerns: (i) the individual remains in a marriage where domestic violence exists and where she is exposed to excessive alcohol use, and (ii) the individual has exhibited unstable behavior such as a pattern of unstable marital relationships, periods of depression, and periods of intense anger that have affected workplace relationships. 1/ I find that these concerns have been resolved. Since December 2007, she successfully completed a five session program of anger management therapy, and has been actively engaged in ongoing individual therapy with both a psychologist and a psychiatrist. They have reported that she has made substantial progress in dealing with personal anger, depression and relationship issues. TR at 256-257, 213-218. Her husband testified that he has consulted with the individual's psychiatrist and is willing to participate in additional counseling. TR at TR at 26. He stated that the individual now is calmer in dealing with domestic issues, that he has moderated his alcohol consumption by giving up whiskey, and that they have had no domestic disturbances since December 2006. TR at 13-19, 28-31, 45. Accordingly, there is substantial evidence in the record to confirm that the individual is now demonstrating greater emotional stability in her family and professional life, is receiving some cooperation from her husband, and has established therapeutic relationships that can assist her in dealing with future domestic

1/ The record in this proceeding indicates that the individual's own alcohol consumption was not a factor in these Criterion L concerns.

and workplace conflicts in a responsible manner. Therefore, I find that the past conduct that gave rise to the Criterion L concerns is unlikely to recur, and that the individual has successfully changed her behavior. See *Revised Adjudicative Guidelines*, ¶ 17(d). 2/

C. *The DOE's Criterion F Concerns*

False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See e.g. *Personnel Security Hearing (Case No. VSO-0281)*, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by Office of Security Affairs, 2000).

At her September 2007 PSI, the individual answered "no" when asked if she had ever harbored any suicidal thoughts. At her psychiatric evaluation in December 2007, she informed the DOE-consultant Psychiatrist that she was hospitalized after taking a potentially lethal dose of aspirin when she was nineteen. TR at 55-57. This incident occurred more than twenty-five years ago, and ordinarily I would be inclined to accept the individual's testimony that the overdose was an embarrassing incident that she had put in the back of her mind and did not recall when formulating her response to the PSI question about suicidal thoughts. *Id.* Further, according to her psychologist, the overdose incident was an emotional "gesture" over a breakup with a boyfriend rather than a serious suicide attempt, and he believed that failing to recall such an incident would not be unusual. TR at 268. In addition, the fact that she recalled and discussed the incident with the DOE-consultant Psychiatrist three months later could be seen as indicating that her initial omission of this information was not deliberate.

2/ The "Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968", were originally published as an appendix to Subpart A of the Part 710 regulations at 66 Fed. Reg. 47061 (September 11, 2001). See *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Guideline F, Paragraph 20*, at <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

However, at the hearing the DOE counsel raised other instances where the individual appeared to avoid revealing derogatory information relating to her security clearance application. Specifically, the individual failed to reveal her 1991 and 2006 alcohol treatment to an Office of Personnel Management (OPM) investigator in June 2007, 3/ and at the hearing she provided misleading information concerning why she entered anger management therapy in December 2007. TR at 59-60, 109-110. In light of these other recent instances of unwillingness to present derogatory information to the DOE in a straightforward manner, I am not convinced that the individual's failure to reveal her overdose incident at her 2007 PSI was not deliberate. As I stated to the individual at the outset of the hearing, an affirmative finding regarding eligibility for access authorization is possible only for individuals who cooperate by providing full, frank and truthful answers to the DOE's relevant questions. TR at 8. Based on this evidence, I find that the individual has not mitigated the Criterion F security concern raised by her failure to report her overdose incident at her 2007 PSI.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from Alcohol Dependence subject to Criterion J. Further, I find that this derogatory information under Criterion J has not been mitigated by sufficient evidence of rehabilitation and reformation. I do find that the individual has mitigated the Criterion L concerns set forth in the Notification Letter. Finally, I find that the individual has not mitigated the Criterion F concern that she deliberately provided an inaccurate response at her 2007 PSI. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that granting her an access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual should not be

3/ At the hearing, the individual testified that she did not reveal her 1991 alcohol treatment to the OPM investigator because it was too far in the past to be in the context of the investigator's question. TR at 106. I reject this explanation. The OPM investigator began his discussion of this topic by asking her about a 1986 arrest for Driving Under the Influence. See OPM investigator's notes at pp. 87-88, DOE Hearing Exhibit 11.

granted an access authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: October 28, 2008